

# United States Department of the Interior

## BUREAU OF LAND MANAGEMENT

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6840 (NV-930) P

July 2, 2002

Instruction Memorandum No. NV-2002-073

Expires: 9/30/2003

To: Field Managers, Nevada

From: State Director, Nevada

Subject: Section 7 of the Endangered Species Act (ESA) Consultation for Land Use Plans (LUPs) in Nevada

The 9<sup>th</sup> Circuit Court of Appeals ruled in *Pacific Rivers Council vs. Thomas* (1994) that federal LUPs “constitute continuing agency action requiring consultation under 7(a)(2) of the Endangered Species Act.” The Center for Biological Diversity, the Sierra Club, and Public Employees for Environmental Responsibility litigated the Bureau of Land Management (BLM) in March 2000 over consultation on the California Desert Conservation Area Plan. The result of this litigation was that it cost the BLM over \$6 million dollars to resolve the case. The Forest Guardians recently filed a Notice of Intent (NOI) to file a Citizen’s Suit under the ESA in Utah for failure to re-initiate programmatic consultation for 8 species on all Utah LUPs. The U.S. Fish and Wildlife Service (USFWS) in Reno, Nevada received a Freedom of Information Act (FOIA) request on May 27, 2002, for all biological assessments and biological opinions on BLM LUPs in Nevada.


In anticipation of a NOI to file a Citizen’s Suit under the ESA for Nevada, we have developed, in cooperation with the USFWS, a “Consultation Agreement” (CA) for all LUPs in Nevada (Attachment 1). Special attention should be given to the schedule in the CA, the responsibilities of each agency, and the need for each field office (FO) to develop a separate, one-page schedule for that particular LUP as outlined in the CA. We assume that if litigated, we should be able to convince the court that we recognize the deficiency and have developed a good faith effort to resolve it within existing funding and staffing constraints.

Additional guidance may be found in the national Memorandum of Agreement for Endangered Species Act Section 7 Programmatic Consultations and Coordination among the Bureau of Land Management, Forest Service, National Marine Fisheries Service and Fish and Wildlife Service (Attachment 2).

It is Nevada policy that following completion of LUP consultations, all FOs are required to re-initiate consultation or conferencing within *one year* for any new USFWS listings or proposed listings. In addition, as it is highly likely that any newly designated candidate species will become proposed or listed during the life of the plan, it would be prudent to request conservation recommendations from USFWS also within *one year* of the designation.

Erick Campbell and Randy McNatt of the Nevada State Office, as well as Washington Office designees, are available to provide assistance to FOs in beginning these LUP consultations and also sheparding them through the process. NSO will be working with Las Vegas and Ely to establish Level 1 and Level 2 teams for their consultations.

If you have any questions please feel free to contact Erick Campbell (775-861-6471) or Randy McNatt (775-861-6473) of my staff.



Robert V. Abbey

2 Attachments

1. Consultation Agreement (8 pp)
2. MOA for ESA (15 pp)